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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6216 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil
Judge? No

AHMEDABAD GREEN BELT KHEDUT MANDAL & ORS

Versus

STATE OF GUJARAT & ORS.

Appearance:

Shri A.J. Patel, Advocate, with Shri C.C. Bhalja,

Advocate, for the Petitioners

Shri T.H. Sompura, Asst. Govt. Pleader, for
Respondent No. 1

Respondent No. 2 served

Shri B.H. Bhagat, Advocate, as instructed by
Messrs. Ambubhai Divanji & Co., for Respondent
No. 3

Shri S.I. Nanavati, Advocate, for Respondent No.
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Shri J.D. Ajmera, Advocate, as instructed by
Government Solicitor Shri D.A. Bambania, for
Respondent No. 5

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 18/03/96

ORAL JUDGEMENT

The resolution passed by the State Government (respondent No. 1 herein) on 12th August 1983 according to its sanction to the draft development plan under sec. 17 of the Gujarat Town Planning and Urban Development Act, 1976 (the Act for brief) prepared by the Municipal Corporation of Ahmedabad (respondent No. 2 herein) for the city of Ahmedabad is under challenge in this petition under art. 226 of the Constitution of India.

2. The facts giving rise to this petition move in a narrow compass. Respondent No. 2 published a draft development plan for the city of Ahmedabad some time on 15th January 1976. It appears that after following the procedure prescribed under sections 13, 14 and 15 of the Act, the draft development plan with all suggestions and modifications was sent to respondent No. 1 for according its sanction under sec. 17 thereof. It appears that respondent No. 1 decided that some modifications are required to be made in the draft development plan. Thereupon it acted in view of the proviso to sec. 18(1)(a) of the Act and invited suggestions and/or objections with respect to the proposed modifications. The notification in that regard was issued on 22nd January 1978 and published in the official gazette on 31st August 1978. It appears that the petitioners submitted their objections thereto to respondent No. 1. It appears that thereafter sanction was accorded by respondent No. 1 to the draft development plan by the Government Resolution passed on 12th August 1983. Its copy is at Annexure C to this petition. That aggrieved the present petitioners. They have therefore moved this Court by means of this petition under art. 226 of the Constitution of India for questioning the validity of the resolution at Annexure C to this petition.

3. Learned Advocate Shri A.J. Patel for the petitioners has urged that the State Government was required to accord its sanction to the draft development plan within one year from inviting objections or in any case within two years therefrom in view of Rule 7 of the Gujarat Town Planning and Urban Development Rules, 1979 (the Rules for convenience). In this case, as pointed out hereinabove, the objections to the revised draft

development plan were invited by the notification issued on 22nd January 1978 and published in the official gazette on 21st August 1978. The sanction to the draft development plan, according to learned Advocate Shri Patel for the petitioners, ought to have been accorded latest by 31st August 1980. In the instant case, it has been urged that the sanction was accorded nearly 3 years thereafter on 12th August 1983 by means of the Government Resolution at Annexure C to this petition. In that view of the matter, runs the submission of learned Advocate Shri Patel for the petitioners, the draft development plan can be said to have lapsed and the Government Resolution at Annexure C to this petition will be of no consequence or effect.

5. In this connection, a reference deserves to be made to the Division Bench ruling of this Court in the case of Kikabhai Ukabhai Patel & Ors. v. State of Gujarat & Ors. reported in 1988(1) 29(1) Gujarat Law Reporter 569. It has provided a complete answer to the aforesaid submissions urged before me by learned Advocate Shri Patel for the petitioners. The relevant observations therein are :

A conjoint reading of provisions of secs. 13 to 17 clearly shows that even at the level of the area development authority, modifications in the proposed development plan can be suggested by the members of the public. If these modifications proposed are not of substantial nature, provisions of sec. 14 can be straightway followed by the area development authority, viz. such non-substantial proposed modifications can be straightway considered by the authority and the authority itself can modify the plan accordingly if it accepts the said proposals. But on the other hand, if the proposed modifications are substantial in nature, gamut of sec. 15 has to be followed by the authority and after following it the authority may accept modifications or may not. But in either case, the original draft development plan and regulations with suggestions and objections received under sections 14 and 15, are also required to be forwarded to the State Government as per sec. 16(1) read with sec. 16(2) of the Act. It is such draft development plan and regulations accompanied by the suggestions and objections that have to be considered by the State of Gujarat for the purpose of granting

sanction to the same. It is at that stage that sec. 17(1)(a)(i) applies. If the State Government is inclined to sanction the plan so received, then the period prescribed for doing so will be 12 months as laid down by Rule 7(1) of the Rules. If, however, on the other hand, the State Government finds that objections and suggestion received along with the draft development plan from the area development authority required the plan to be modified, which modifications otherwise should have been carried out by the concerned authority at its end in the light of suggestions and objections received by it, then on the basis of the available data, the State Government in exercise of its power under sec. 17(a)(i), may sanction the plan with modifications which the State authority considers proper and for that purpose, time permitted is further 12 months viz. within 24 months of the receipt of the draft development plan. This is what has been laid down by Rule 7(2) of the Rules. But in a case in which the State Government is not proposing to accept the modifications as suggested in the objections tendered before the area development authority and which have travelled with the plan to the State Government under sec. 16(2), and the State Government itself suo motu wants to introduce modifications in the plan as contemplated by the proviso to sub-clause (ii) of sec. 17(1)(a), then in that case, the State Government itself has to invite objections from the members of the public likely to be affected by such modifications. Once that procedure is followed, there is no period prescribed for completing such exercise. It is interesting to note that after such suo motu proposed modifications are published by the State of Gujarat and objections are invited, the State Government can sanction the plan with such substantial modifications after considering the objections received to the proposed substantial modification and for the said exercise, no time limit is prescribed by sec. 17(1)(c) of the Act.

6. The aforesaid Division Bench ruling of this Court is binding to me sitting as a single Judge. Even otherwise, I am in respectful agreement therewith. It is on all fours applicable in the present case. As held therein, no time-limit is provided for according sanction to the draft development plan if the State Government has acted in accordance with the proviso to sec. 17(1)(a) of

the Act.

7. In view of my aforesaid discussion, I have found no merit or substance in this petition. It deserves to be rejected.

8. In the result, this petition fails. It is hereby rejected. Rule is accordingly discharged with no order as to costs.
